

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC., an
Illinois corporation; and JENNIE-O-FOODS,
INC., a Minnesota corporation,

Plaintiffs.

vs.

SWIFT-ECKRICH, INC. d/b/a ConAgra
Refrigerated Foods, a Delaware corporation,

Defendant.

Case No. CIV-01-347-C

DECLARATION OF GAIL VANCE CIVILLE

I, Gail Vance Civile, declare as follows:

1. I am President of Sensory Spectrum, Inc. in Chatham, New Jersey, a company which has pioneered advanced sensory evaluation approaches to industry, academia and government for over 25 years. The matters in this declaration are based upon my personal knowledge. If called as a witness, I could testify competently to these facts. This declaration is hereby submitted in lieu of an affidavit pursuant to 28 U.S.C. §1746.

2. I obtained a Bachelors of Science degree in Chemistry from the College of Mt. St. Vincent, New York in 1965. I began my career in 1965 as a product evaluation analyst with the General Foods Corporation. As an expert in the evaluation of sensory properties, I have worked with thousands of food and non-food consumer products using sophisticated consumer and descriptive techniques. I have published over 20 articles on general sensory methods, as well as sophisticated application of sensory strategy, and am the co-author of *Sensory Evaluation Techniques* and *Sensory Evaluation in Quality Control*. I am the recipient of the 2001 David R. Peryam Award in recognition of my contributions to the fields of basic and applied sensory science.


EXHIBIT B

PTO-003148

3. The colors represented in color photographs or videotapes or computer screens are not representative of the actual object, in almost all cases. Given the different color settings available on computers, printers, photolabs and photographic equipment, as well as differences in light and film, the colors represented in such pictures or printouts cannot accurately reflect the color of the product being taken unless care has been taken to match the actual situation and the film version. Furthermore, the color represented in video pictures and photographs fade over time. Therefore, it is my opinion that the videotapes taken in 1992 to 1998, and which were attached as Exhibits to the David Howard Affidavit, cannot be used to establish or verify the true color of any object represented in those videotapes. For the same reasons, it is my opinion that the color photographs attached to the Jeff Dierenfeld Affidavit and the David Howard Affidavit cannot be used to establish or verify the color of any product represented in those photographs. Finally, it is my opinion that no system or test has been used to verify that the color computer printouts attached as Appendix Z to Plaintiffs' Motion For Partial Summary Judgment accurately reflect the color of a product with certain L, A and B values. Rather, the only way to verify the L, A and B values of a product is by using a Hunter-Lab Color Meter to measure the L, A and B values of that product.

4. It is extremely difficult for individuals not highly trained in visual sensory perception to be able to identify as "golden brown" a product produced years ago. Most individuals do not have precise memories of color. For example, most individuals cannot pick out a paint color at a paint store which would match the color of a fabric, unless there is a side-by-side comparison of the colors. Therefore, it is my opinion, that a witness's statement in 2002 about the color of a product from 1993 to 1997 is unreliable.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 30, 2002, at Chatham, New Jersey.



Gail Vance Civile

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITHERM FOOD SYSTEMS, INC.,)	
a Illinois corporation; AND)	
JENNIE-O FOODS, INC.,)	
a Minnesota corporation,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-01-347-C
)	
SWIFT-ECKRICH, INC. d/b/a)	
CONAGRA REFRIGERATED)	
FOODS, a Delaware corporation,)	
)	
Defendant.)	

**RESPONSE OF PLAINTIFF, UNITHERM FOOD SYSTEMS, INC.
TO SWIFT-ECKRICH, INC.'S FIRST SET OF INTERROGATORIES**

In accordance with Rule 33 of the Federal Rules of Civil Procedure, Plaintiff, Unitherm Food Systems, Inc. ("Unitherm") responds to Defendant "Swift-Eckrich, Inc.'s First Set of Interrogatories to Unitherm Food Systems, Inc." (the "First Set") with the following responses and objections. Unitherm reserves the right to supplement this response after completion of discovery, and further reserves the right to introduce evidence at the time of trial based upon information and/or documents located, developed or discovered subsequent to the date hereof, which evidence may supplement, amplify, modify or be in conflict with the information provided to the Defendant which is based on present information only.

EXHIBIT C

PTO-003151

INTERROGATORY NO. 4: Identify every confidentiality agreement (written or oral, explicit or implied) concerning information referring or relating to Unitherm's browning/smoking process.

RESPONSE TO INTERROGATORY NO. 4:

Hockenhull & Hayes, U.K.

Studleigh Royd, U.K.

Corrigan Brothers, U.K.

Rocco Foods

Carolina Turkeys

Armour Swift-Eckrich

Perdue Farms

Jennie-O Foods

Hormel Foods

Foster Foods

Plantation Foods

Dietz & Watson

Cargill

House of Raeford

Al & John, Inc.

Cooper Foods

Hudson Foods

Corrigan Brothers

Hockenhull & Hayes

Red Arrow

Proctor Schwartz

Thorne Apple Valley

Bryan Foods

Butterball Turkeys

El Joy Poultry

In addition, *see also* confidentiality agreements and confidential documents previously produced by Plaintiffs.

INTERROGATORY NO. 5: Identify and describe every demonstration or disclosure of Unitherm's browning/smoking process by anyone prior to May 11, 1997.

RESPONSE TO INTERROGATORY NO. 5: In addition to the general objections stated above, Plaintiff objects to this request as being vague and indefinite, particularly with respect to Defendant's reference to "every demonstration or disclosure. . .by anyone. . . ." without waiving any of these objections, Plaintiff answers as follows:

Tom Hockenhull, Hockenhull & Hayes

Al Oldja, Al and John, Inc.

John Oldja, Al and John, Inc.

Daniel Benson, Rocco Foods

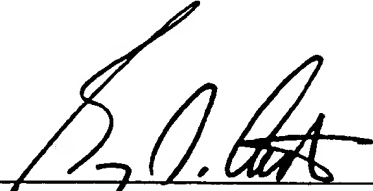
Ron Ratz, Red Arrow

David Borthwick, Proctor Schwartz

Joe Murray - then Thorne Apple Valley

INTERROGATORY NO. 11: As to each paragraph of the Complaint, identify the employee or past employee of plaintiff Unitherm who is most knowledgeable with respect to the facts alleged therein.

RESPONSE TO INTERROGATORY NO. 11: David Howard, Paul Bowker,
Jim Wade.



Burck Bailey (OBA No. 415)
Greg A. Castro (OBA No. 11787)
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway, Suite 1700
Oklahoma City, Oklahoma 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

-and-

Dennis D. Brown (OBA No. 13662)
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Tulsa, OK 74103-3318
Telephone: (405) 599-0621
Facsimile: (405) 583-9659

Attorneys for Plaintiffs, Unitherm Food Systems, Inc.
and Jennie-O Foods, Inc.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 3 day of October, 2001, a true and correct copy of the above and foregoing was sent by Federal Express to the following:

Robert A. Schroeder, Esq.
W. Casey Walls, Esq.
Christie, Parker & Hale LLP
350 West Colorado Blvd., Suite 500
Pasadena, CA 91109

and was mailed by first class U.S. Mail, postage prepaid thereon, to the following:

Robert D. Tomlinson, Esq.
Keith D. Tracy
McKinney & Stringer
Corporate Tower
101 North Robinson Ave., Suite 1300
Oklahoma City, OK 73102-5504

John P. Passarelli, Esq.
David H. Roe, Esq.
McGrath, North, Mullin & Kratz
222 S. Fifteen Street, Suite 1400
Omaha, NE 68102

Attorneys for Defendant



Greg A. Castro

120101.3

VERIFICATION

STATE OF OKLA)
) ss.
COUNTY OF Creek)

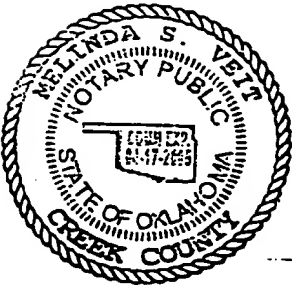
I, David Howard, one of the duly authorized representatives of Unitherm Food Systems, Inc., in the above-referenced action, being of lawful age and being first duly sworn, do state upon my oath that I have read the "Response of Plaintiff, Unitherm Food Systems, Inc. to Swift-Eckrich, Inc.'S First Set of Interrogatories" and all of the facts and statements made therein are true and correct to the best of my knowledge and belief.

DATED this 24 day of September, 2001.



SUBSCRIBED and SWORN to before me this 24 day of September, 2001.

[SEAL]



119723.1

Melinda S. Veit
Notary Public
My Commission Expires: 4.17.05

1 IN THE UNITED STATES DISTRICT COURT FOR THE WES
2 UNITHERM FOOD SYSTEMS, INC.,)
3 an Illinois corporation; and)JENNIE-O FOODS, INC.,)
4 a Minnesota corporation,))
5 Plaintiffs,))
6 vs.) Case No. CIV-01-347-C
7 SWIFT-ECKRICH, INC. d/b/a) CONAGRA REFRIGERATED FOODS,)
8 a Delaware corporation,))
9 Defendant.))

10 THE DEPOSITION OF PAUL CORRIGAN,
11 taken on behalf of the Plaintiffs, on the 23rd day of
12 October, 2001, pursuant to Federal Rules of Civil
13 Procedure, at the law offices of Fellers, Snider,
14 Blankenship, Bailey & Tippens, 321 South Boston, Suite 800,
15 Tulsa, Oklahoma, before Michele Vest, a Certified
16 Shorthand Reporter in and for the State of Oklahoma.

17 APPEARANCES:

18 For the Plaintiffs: MR. DENNIS D. BROWN
19 Fellers, Snider, Blankenship,
20 321 South Boston, Suite 800
21

22 For the Defendant: MR. ROBERT A. SCHROEDER
23 350 West Colorado Boulevard
24

25 Also Present: MR. DAVID HOWARD

EXHIBIT D

1 And I think he experimented a bit, I don't know, to
2 get the right color on the hams.

3 Q. Okay. Do you know when this occurred? Do you
4 recall when this occurred?

5 A. Just about in 1989, I think, around about that
6 time. I can't be sure of the dates.

7 Q. Was this before Mr. Howard moved to the United
8 States?

9 A. I believe it was.

10 Q. And you mentioned a smoke -- I think you said
11 Smoked Liquid?

12 A. Smoke Liquid. They were selling the Smoke Liquid
13 product at the exhibition. And I just mentioned to
14 David at the time how smoking hams is very -- the
15 old-fashion way of smoking hams was very intensive,
16 and you had to get the hams and put them in a mesh
17 and hang them in the fridge and take them out after
18 you had them smoked for eight hours or so. And it
19 wasn't a very hygienic way of doing the job.

20 Q. Do you recall who was selling this Liquid Smoke?

21 A. I don't know the name. I knew at the time, but I
22 don't know now. I thought it was a German firm,
23 but I'm wasn't sure.

24 Q. You think it was a German firm?

25 A. I don't know for sure.

1 to the United States?

2 A. I was coming to the exhibition anyway. Mr. Howard
3 did say would I come to the exhibition as well.

4 Q. And where was the exhibition?

5 A. It's in Chicago.

6 Q. Now, did you come at your own expense?

7 A. No, Mr. Howard's.

8 Q. He paid for you to come and to attend
9 the exhibition?

10 A. Yeah.

11 Q. And then at some point did you meet with Mr. Howard
12 to discuss these events from 1989?

13 A. Since '89. Well, at the time, we had spoken about
14 it, yes. And I think about that time, roughly, I
15 had sent the hams up to him.

16 Q. Well, we'll go back to 1989. But right now I'm
17 interested in your more recent discussions with Mr.
18 Howard. He called -- he telephoned you in England;
19 is that correct?

20 A. Yes.

21 Q. And asked you to come to the United States?

22 A. That's correct.

23 MR. BROWN: Bob, if I could interrupt
24 here. You need to speak a little bit louder,
25 Mr. Corrigan. She's having a hard time.

1 MR. SCHROEDER: Why don't we just switch
2 seats. This way you can look at me and you won't
3 have your back to the reporter, it might make it
4 easier.

5 Q. (By Mr. Schroeder) Now, when Mr. Howard called you
6 in England, he arranged to meet with you here in
7 the United States?

8 A. That's correct.

9 Q. And when did he first meet with you in the United
10 States, about how long ago?

11 A. Well, he came to Chicago, and I met him last
12 Tuesday -- last Wednesday.

13 Q. About six days ago?

14 A. Yeah.

15 Q. And did you discuss with him at that time what had
16 happened in 1989?

17 A. Yes.

18 Q. And he refreshed your recollection?

19 A. That's correct.

20 Q. He went over this with you?

21 A. Yes.

22 Q. And then you came here to Tulsa?

23 A. Yes.

24 Q. When did you come to Tulsa?

25 A. I came last Saturday.

1 Q. And since that time have you been spending your
2 time with Mr. Howard?

3 A. That's correct.

4 Q. And did you also meet with Mr. Brown?

5 A. We met yesterday.

6 Q. For how long?

7 A. About half an hour.

8 Q. About how today?

9 A. No, we just walked in the door. We didn't talk.

10 He never said a word.

11 Q. Now, let's go back to 1989. Again, you said
12 there's nothing in writing about this; is that
13 right?

14 A. Nothing.

15 Q. Did you have any agreements with Mr. Howard
16 relating to events that you've described in 1989?

17 A. No. I done Mr. Howard a favor by sending him the
18 hams.

19 Q. Did you charge him for the hams?

20 A. Oh, no.

21 Q. Did you sign anything?

22 A. Nothing.

23 Q. Did you agree to anything not in writing?

24 A. No.

25 Q. Now, you used the term "Liquid Smoke" today?

- 1 A. That's right.
- 2 Q. When did you first become familiar with the term
- 3 Liquid Smoke?
- 4 A. I think it was around '88 or '89. It was at the
- 5 exhibition. I read about it in a magazine, and it
- 6 was in at the exhibition and I happened to see it
- 7 there.
- 8 Q. And what does the term "Liquid Smoke" mean to you?
- 9 A. It means that -- I suppose to look at it looks like
- 10 a very dark watery liquid smoke.
- 11 Q. Can you tell us anything else about it?
- 12 A. No. I can't. I'm not a technician, that sort.
- 13 Q. Sure. I understand. I just want to know what it
- 14 is that you know and what you don't know.
- 15 A. I don't know that much about it.
- 16 Q. I'm not suggesting that you ought to know anything
- 17 that you don't. You talked about the term
- 18 "pyrolysis product" earlier today in your
- 19 deposition?
- 20 A. Pyrolysis, I'm sorry, give me that again.
- 21 Q. Pyrolysis product. Should I spell that for you?
- 22 A. Are you asking me what it means? I don't know what
- 23 it means.
- 24 Q. No, I'm not. But you do recall mentioning that?
- 25 A. It was mentioned and then I said I wasn't too sure

1 what pyrolysis meant. It's a technical term that I
2 wouldn't be familiar with.

3 Q. So you don't have any way of knowing whether the
4 liquid that Mr. Howard was using in 1989 was a
5 pyrolysis product?

6 A. I don't know.

7 Q. And then, certainly, you wouldn't know whether it
8 was made from hard wood or sugar?

9 A. I couldn't know.

10 Q. Or whether it was made from something called
11 Dextrose?

12 A. I wouldn't know.

13 Q. What about the concentration of the Liquid Smoke
14 based on the weight of the meat?

15 A. I wouldn't know too much about that.

16 Q. Now, could you describe for us the color of the
17 hams that Mr. Howard returned to you after he
18 treated them?

19 A. A nice golden brown color. When I say nice, I mean
20 it's nice to look at, attractive to look at.

21 Q. Do you remember the words golden brown being used
22 in 1989?

23 A. I can't remember. That's what I presume. We used
24 the same terminology then as we use now.

25 Q. Did Mr. Howard show you the patent, Exhibit 1?

CERTIFICATE

STATE OF OKLAHOMA)) SS
COUNTY OF TULSA)

I, Michele Vest, Certified Shorthand Reporter
in and for the State of Oklahoma, do hereby certify that
on the 23rd day of October, 2001, at the law firm of
Fellers, Snider, Blankenship, Bailey & Tippens, 321 South
Boston, Tulsa, Oklahoma, appeared the above witness,
PAUL CORRIGAN, who was by me duly sworn to testify the
truth, the whole truth and nothing but the truth in the
case aforesaid and that the deposition by him was reduced
by me in stenograph and thereafter transcribed under my
supervision, and is fully and accurately set forth in the
preceding 46 pages.

I do further certify that I am not related to
nor attorney for any of the parties hereto or otherwise
interested in the event of said action.

WITNESS my hand this day of , 2001.

Michele Vest

Original Deposition Cost: \$115.00

Paid by the Plaintiffs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITHERM FOOD SYSTEMS, INC.,
a Illinois corporation; AND
JENNIE-O FOODS, INC.,
a Minnesota corporation,

Plaintiffs,

v.

SWIFT-ECKRICH, INC. d/b/a
ARMOUR SWIFT-ECKRICH,
a Delaware corporation,

Defendant.

Case No. CIV-01-347-C

**RESPONSE OF PLAINTIFFS, UNITHERM
FOOD SYSTEMS, INC. AND JENNIE-O FOODS, INC.
TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSIONS**

In accordance with Rule 36 of the Federal Rules of Civil Procedure, Plaintiffs, Unitherm Food Systems, Inc. and Jennie-O Foods, Inc. ("Plaintiffs"), respond to "Defendant's Third Set of Requests for Admissions" (the "Third Request"), with the following responses and objections. Plaintiffs reserve the right to supplement their responses after completion of discovery, and further reserve the right to introduce evidence at the time of trial based upon information and/or documents located, developed or discovered subsequent to the date hereof, which evidence may supplement, amplify, modify or be in conflict with the answers to the Third Request which are based upon present information only.

EXHIBIT E

PTO-003165

REQUEST NO. 9: Apart from the agreement of February 24, 1998 alleged in ¶ 35 of the Complaint, Defendant has not entered into any other written agreement with Plaintiff Unitherm to keep information secret or confidential.

RESPONSE TO REQUEST NO. 9: Denied. Plaintiffs further object to Request No. 9 in that it refers to a paragraph contained in the original Complaint and not to the allegations contained in the First Amended Complaint.

REQUEST NO. 10: There was no agreement between Plaintiff Unitherm and Defendant that imposed any obligations of confidentiality on Defendant with respect to the alleged “demonstrations” of September 30, 1993 and October of 1993 referred to in ¶¶ 14, 17 and 18 of the Complaint.

RESPONSE TO REQUEST NO. 10: Denied. Plaintiffs object to Request No. 10 in that it refers to paragraphs contained in the original Complaint and not to the allegations contained in the First Amended Complaint.

REQUEST NO. 11: There was no agreement between Plaintiff Unitherm and Defendant that imposed any obligations of confidentiality on Defendant with respect to the alleged “seminar” of January 25, 1994 referred to in ¶ 20 of the Complaint.

RESPONSE TO REQUEST NO. 11: Denied. Plaintiffs further object to Request No. 11 in that it refers to a paragraph contained in the original Complaint and not to the allegations contained in the First Amended Complaint.

REQUEST NO. 12: With respect to information disclosed at the alleged “seminar” of January 25, 1994 referred to in ¶ 20 of the Complaint, Red Arrow was under no obligation of confidentiality to Plaintiff Unitherm.

RESPONSE TO REQUEST NO. 12: Denied. Plaintiffs further object to Request No. 12 in that it refers to a paragraph contained in the original Complaint and not to the allegations contained in the First Amended Complaint.

REQUEST NO. 13: Prior to May 11, 1998, Plaintiff Unitherm had disclosed the process that it refers to in the Complaint as the “Unitherm browning/smoking process” to potential customers for its ovens without obtaining from those potential customers agreements to keep that process secret.

RESPONSE TO REQUEST NO. 13: Denied.

REQUEST NO. 14: Prior to May 11, 1998, Plaintiff Unitherm had disclosed the process that it refers to in the Complaint as the “Unitherm browning/smoking process” to Plaintiff Jennie-O without obtaining from Jennie-O an agreement to keep that process secret.

RESPONSE TO REQUEST NO. 14: Denied.

REQUEST NO. 15: Prior to May 11, 1998, Plaintiff Unitherm had no written agreements with any of its employees or former employees requiring those employees to keep secret information relating to the process referred to in the Complaint as the “Unitherm browning/smoking process.”

RESPONSE TO REQUEST NO. 15: Denied.

REQUEST NO. 16: Prior to May 11, 1998, Plaintiff Unitherm demonstrated the process referred to in the Complaint as the "Unitherm browning/smoking process" on a non-confidential basis at at least one trade show.

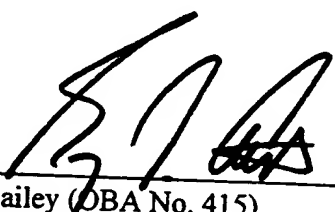
RESPONSE TO REQUEST NO. 16: Denied.

REQUEST NO. 17: Prior to May 11, 1998, Plaintiff Unitherm had disclosed the process that it refers to in the Complaint as the "Unitherm browning/smoking process" to Thorn Apple Valley, Inc. without obtaining from Thorn Apple Valley, Inc. an agreement to keep that process secret.

RESPONSE TO REQUEST NO. 17: Denied.

REQUEST NO. 18: The sales materials, proposals and correspondence referred to in ¶ 42 of the Complaint were not marked so as to indicate that they were confidential or secret.

RESPONSE TO REQUEST NO. 18: Denied. Jennie-O further objects to Request No. 18 in that it refers to a paragraph contained in the original Complaint and not to the allegations contained in the First Amended Complaint.



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-and-

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Facsimile: (405) 583-9659

Attorneys for Plaintiffs, Unitherm Food Systems, Inc.
and Jennie-O Foods, Inc.

CERTIFICATE OF MAILING

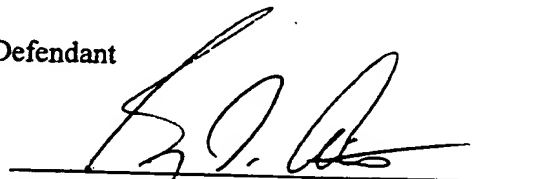
The undersigned hereby certifies that on the 14th day of September, 2001, a true and correct copy of the above and foregoing was served via facsimile and U.S. Mail, postage prepaid thereon, to the following:

Howard A. Kroll, Esq.
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Attorneys for Defendant


Greg A. Castro

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